

APPENDIX V:

Proposed Activity and Use Limitation / Deed Restriction

Appendix V

Proposed Conditions of the Notice of Activity and Use Limitation

Following the completion of the risk-based cleanup of PCBs, a Notice of Activity and Use Limitation (AUL), which is a type of deed restriction, will be recorded for the property (Lot 3B, addressed as 169.2 Bridge Street, at the Middlesex North District Registry of Deeds. The Notice of AUL will be recorded by the owner of the property, i.e., Massachusetts Mills III Limited Partnership, and will apply to the portion of the property comprising the entirety of the courtyard. The proposed conditions of the Notice of AUL are provided below.

Permitted Uses and Activities

1. Passive recreational use;
2. Multi-family residential, school, day care, institutional, commercial or industrial use of the property, subject to the Conditions and Obligations, below;
3. Repair or maintenance of underground utilities within existing clean utility corridors, subject to the Conditions and Obligations, below;
4. Installation of new underground utilities, subject to the Conditions and Obligations, below;
5. Landscaping and maintenance activities within the courtyard, subject to the Conditions and Obligations, below;
6. Emergency vehicular or large equipment traffic over the top of the protective barrier, as necessary to respond to emergencies or conduct landscaping, utility repair or other maintenance work, subject to the Conditions and Obligations, below;
7. All other lawfully-permitted uses and activities not prohibited by this Notice of AUL.
8. Such other activities or uses, which in the Opinion of the LSP, shall present no greater risk of harm to health, safety, welfare and the environment than the activities and uses set forth in this paragraph.

Inconsistent Uses and Activities

1. Single-family residential use and active recreational use (such as a ballfield);
2. Construction of buildings or other structures in the courtyard;
3. Vehicular or large equipment traffic on top of the protective barrier, except as permitted above;
4. Disturbance or excavation of soils located below the protective barrier or inside the isolated soil repositories, except as allowed subject to the Conditions and Obligations, below;
5. Relocation of soils located below the protective barrier or inside the isolated soil repositories, except as allowed subject to the Conditions and Obligations, below, and if the LSP renders an Opinion which states that such relocation is consistent with maintaining No Significant Risk and with pertinent, state and federal regulations.

Conditions and Obligations

1. The land subject to this Notice of AUL was used for PCB remediation waste disposal under 40 CFR 761.61 of the Toxic Substances and Control Act (TSCA). The PCB cleanup level left in soils located both inside isolated soil repositories and beneath the protective barrier

range up to 14 mg/kg for most soils although individual samples may contain <50 mg/kg PCBs. These same soils also contain asbestos. The PCB cleanup level left in soils located beneath the protective barrier alone range between >1 and 10 mg/kg for most soils although individual samples may contain <50 mg/kg PCBs. These same soils may also contain asbestos.

2. All PCB-contaminated soils are located three feet or more below grade and are covered with a protective barrier consisting of three feet of clean soils overlying a marker barrier. The more contaminated soils are also located in isolated soil repositories. Together, these structures are intended to impede direct contact to soils and constitute an alternative to the TSCA cap.
3. There is a requirement under both TSCA and the Massachusetts Contingency Plan (MCP) to maintain the protective barrier in good condition and to maintain the isolated soil repositories such that the soils in the repositories remain separate from other soils beneath the protective barrier. The protective barrier must be inspected at least annually and after each disturbance (including that caused by vehicular traffic) of the surface of the protective barrier. Any openings in the protective cover must be repaired within 72 hours of discovery in compliance with TSCA.
4. Landscaping and hardscaping may be conducted on the surface of the protective barrier. Grass and ornamental landscape vegetation may be planted on the protective barrier. No bushes or trees with root structures having the potential to penetrate the protective barrier, when mature, may be planted in the protective cover. Trees or bushes may be planted in containers placed on top of the protective barrier, but may not be planted within, as part of, or through a protective barrier.
5. A child's playground may be placed on the protective barrier, so long as the playground is constructed on top of hardscaping.
6. Underground utilities are located in two clean utility corridors. Utility repair or maintenance work may be conducted so long as: (a) the clean utility corridors are not breached, (b) marker walls, bottom and cover are replaced or repaired upon completion of the utility work, (c) the protective barrier is restored to its original condition, and (d) the LSP inspects the utility corridor prior to completion. For emergency utility repair, the LSP should be notified as soon as practicable, but before completion of the project. For non-emergency utility repair, the LSP should be notified prior to the utility work. The utility repair or maintenance work must be conducted under a Soil Management Plan that is kept on-Site in case of an emergency.
7. No construction project, utility installation project or other soil disturbance work that will penetrate the marker layer of the protective barrier may be conducted without first doing remediation work under TSCA, the MCP [310 CMR 40.1067(4) and 40.1080] and Massachusetts Asbestos Regulations. The LSP and Asbestos Manager must first be notified to evaluate the project, and the USEPA Region I and MassDEP must provide approvals or presumptive approvals prior to proceeding.
8. If the marker barrier separating the protective barrier from the underlying contaminated soils is breached, the USEPA Region I and MassDEP must be notified and the breach repaired.